

retained the more limited wording of the proposed rule, to emphasize that the exception is limited to these items.

Section 6.91, Samples

The current section allows an industry member to furnish or give samples of distilled spirits, wine or malt beverages to a retailer. The petitioners recommended amending this section to provide that industry members may furnish a maximum of 750 milliliters (mls.) of distilled spirits samples to qualifying retailers, rather than the obsolete 500 milliliter (ml.) container cited in the regulation. They further requested that the third sentence of this section, which limits the size of a sample of spirits given to a State or a subdivision of a State to 2 liters, should be eliminated in its entirety.

ATF agreed with the petitioners that the reference to the obsolete 500 ml size be replaced, but proposed a maximum of 3 liters for distilled spirits. ATF also proposed amending the current regulation by limiting the number of commonly owned retail establishments (not to exceed four per retailer) which can be given samples. This amendment would allow for a control State or chain retailer to receive sufficient samples to determine whether to purchase a product.

Comments on these proposed changes were mixed. The American Brandy Association opposed any revision to this section. DISCUS supported the change to a spirits sample size of 3 liters and WSWA favored a sample size of 750 ml, since that is the most common commercial package size. ATF has decided to retain its proposal to allow a sample size of 3 liters for spirits.

The proposal to limit the number of samples which may be given to a "chain" of retail outlets met with a number of adverse comments. NABCA, Hinman & Carmichael, DISCUS and Wine Institute all noted that first, individual outlets within a chain may have the ability to request that certain items be purchased, even though the order is placed centrally; and second, that samples are also provided to retailers so their personnel can be sufficiently familiar with a brand to recommend or use it. Limiting samples to four outlets per chain would restrict an industry member's ability to promote its products. In light of these comments, ATF is removing the proposed limitation in the number of samples which may be given to a chain from the final rule.

Several commenters also addressed an area which had not been changed in the proposed amendment. E. & J. Gallo Winery and Hinman & Carmichael both

noted that, in an industry as dynamic as the alcoholic beverage industry, it is not practical to limit samples to retailers who have not previously purchased a brand from an industry member. They suggested a time limit of six months or a year. The final rule has been changed to allow samples to be given to a retailer who has not purchased the brand from the industry member within the last 12 months.

Section 6.92, Newspaper Cuts

In Notice No. 794, ATF proposed to change the word "loaned" to the word "lent" in this section. However, in view of the change to § 6.84, which eliminates the options of renting or lending product displays, ATF has determined that for consistency, this section should permit only permanent transfers. Therefore, the words "furnished," "loaned" and "rented" have been removed from this section.

Section 6.93, Combination Packages

In general, section 6.93 addresses combination packages where an industry member packages a non-alcoholic item with distilled spirits, wine, or malt beverages and, in particular, paragraph (c) requires that the cost of the combination package be passed on to the retailer. The petitioners recommend deleting paragraph (c) of section 6.93 because they feel the condition imposed by the paragraph is really a pricing decision outside of ATF's regulation under the FAA Act.

ATF proposed removing all the conditions currently imposed on combination packages. Some commenters supported this proposal, but NABCA expressed concern that, as written, the exception could be used as a subterfuge to deliver non-alcohol items to the retailer with no intention that they be passed along to consumers. Accordingly, ATF has amended this section in the final rule to clarify that the combination packages must be intended for sale to consumers.

Section 6.94, Educational Seminars

ATF proposed to clarify the final sentence, "This does not authorize an industry member to pay a retailer's expenses in conjunction with an educational seminar." by adding the explanatory phrase "(such as travel, lodging, and meals)."

Many commenters objected to excluding meals and, upon consideration of the comments, ATF has decided to adopt a revised final rule which will permit an industry member to provide nominal hospitality in conjunction with an educational seminar.

Section 6.96, Consumer Promotions

ATF proposed revising the text of section 6.96(a), Coupons, to make the language consistent with the other sections and to simplify the conditions. Hinman & Carmichael noted that the restriction in paragraph (a)(1) of the proposed rule, that redemption of the coupons may not be limited to a particular retailer or group of retailers, could be read as preventing promotions by small producers who have a limited area of distribution, or regional promotions by larger producers. This restriction, which is also in the current § 6.96(a), was intended to prevent the benefit of a promotion from going to specific, named retailers. ATF modified the provision in the final rule to require that all retailers within the market where the offer is made may redeem such coupons.

Section 6.98, Advertising Service

The petitioners recommended adding the clause "except where the exclusive retailer in the state is a state agency" to paragraph (a) to read as follows:

"(a) The advertisement does not also contain the retail price of the product, except where the exclusive retailer in the state is a state agency, and * * *

The petitioners argue that the objectives of section 105(b) of the FAA Act are not served by prohibiting industry members from advertising control States' prices. The petitioners' proposed revision would permit an industry member to advertise a control State's state-wide retail prices as determined by that State for product sold within the State. The petitioners feel that in such circumstances, there is no possibility of any "inducement" or "exclusion" that would contravene the intent or purpose of the FAA Act.

ATF proposed amending the current regulation in accordance with the industry request, modified to reflect situations in which the sole retailer in a jurisdiction is a State or local agency. ATF also proposed to delete the condition that an advertisement placed by an industry member may not mention events or promotions at a retail establishment.

In response to several comments, ATF is modifying the final rule to specify "State or political subdivision of a State," for consistency with the language in other sections of the regulations. DISCUS suggested using the term "unaffiliated" rather than "two or more" retailers, to make it clear that an advertisement can not list outlets of a single chain, and that change was adopted. NABCA additionally requested that the final rule show that prices may